

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

SPERRY OCEAN DOCK, LIMITED, )  
and STATE OF WASHINGTON, )  
DEPARTMENT OF NATURAL RESOURCES, )

SHB Nos. 89-4 & 89-7

Appellants, )

v. )

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

CITY OF TACOMA; JOHN WOODWORTH )  
and JUDY WOODWORTH; BRUCE STEEL; )  
and STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

Respondents. )

This matter, the appeal of a shoreline substantial development permit issued with conditions by the City of Tacoma, came on for hearing on September 20 and 21 and October 10, 1989, before the Shorelines Hearings Board, Wick Dufford, Presiding; Judith A. Bendor, Chair; Harold S. Zimmerman, Nancy Burnett, William T. Geyer and Mike Gibson.

Appellant Sperry Ocean Dock was represented by Patricia K. Schafer and Darrell Peeples, attorneys at law. The Department of

1 Natural Resources was represented by Jay D. Geck, Assistant Attorney  
2 General. Respondent City of Tacoma was represented by Kyle J. Crews,  
3 Assistant City Attorney. Alexander W. Mackie, attorney at law,  
4 represented the Woodworths and Steel. The Department of Ecology was  
5 represented by Allen T. Miller, Jr., Assistant Attorney General.  
6 Court reporting was provided by Janet Neer and Donna K. Woods,  
7 reporters for Robert H. Lewis and Associates.

## 8 PROCEDURE

### 9 I

10 The appeals herein by Sperry Ocean Dock, Ltd. (SHB 89-4) and the  
11 Department of Natural Resources (SHB 89-7) were consolidated for  
12 hearing. Respondents Woodworth and Steel and the Department of  
13 Ecology intervened in the proceedings. The intervention of the  
14 Woodworths and Steel was allowed on condition that they not be allowed  
15 to raise additional issues beyond those raised by the parties  
16 appellant.

### 17 II

18 Appellants Sperry Ocean Dock and the Department of Natural  
19 Resources filed separate Motions for Summary Judgment. These motions  
20 were denied in a written Order of the Board dated June 1, 1989. A  
21 copy of that Order, marked Attachment A, is annexed hereto and by this  
22 reference made a part hereof.

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III

Prior to the hearing, the Department of Ecology, by letter dated September 18, 1989, notified the Board and the parties that it would not be present at the hearing. On the second day of hearing, September 21, 1989, Sperry Ocean Dock and the City of Tacoma reached an agreement which would allow the proposed office building on the site in question to be used for non-water related uses. This agreement was noted for entry on October 10, 1989, the concluding day of hearing, the notice being sent to all parties on September 28, 1989.

At the hearing on October 10, 1989, the Order was presented with the stipulation of all parties, except the Department of Ecology. The presiding officer received the Stipulation and Order and stated that it would be entered. The Board did not at that time sign and enter the Order.

Two days after the hearing closed, the Board received a Motion from the Department of Ecology opposing entry of the Order authorizing non-water related office use. On October 17, 1989, Sperry Ocean Dock responded to Ecology's Motion on procedural grounds.

Thereafter, on November 29, 1989, the Board asked the parties in support of the agreement to reply to the merits of DOE's argument. On December 13, 1989, Sperry Ocean Dock filed a further response, again opposing DOE's Motion on procedural grounds. The City of Tacoma joined in Sperry Ocean Dock's views, by letter received December 19, 1989.

1 FINDINGS OF FACT

2 I

3 Sperry Ocean Dock Limited seeks a shoreline substantial  
4 development permit to create new facilities for the berthing of  
5 deep-draft vessels along a portion of the waterfront of Commencement  
6 Bay in Tacoma, Washington.

7 The site lies along the northeast shore of Tacoma's peninsula, in  
8 an area of the city called the North Slope. It encompasses an old  
9 facility, built largely over water on pilings, which was used  
10 historically as a grain holding, processing, and loading facility.

11 To the east is the shoreline leading to the Continental Grainery  
12 Terminal. To the west is the former Tacoma Boat Industrial Building.

13 II

14 The bed of the bay drops off rapidly from the shore at the site.  
15 At low water, the depth is about 25 feet at a distance of 30 feet from  
16 the shore; the depth is 50 feet at a distance of 60 feet from the  
17 shore. The natural deep water at the site is a resource in limited  
18 supply in this and other ports within the state.

19 III

20 The land area of the Sperry Ocean Dock site is squeezed between  
21 the waters of the bay and a major transportation corridor paralleling  
22 the shore, consisting of three Burlington Northern Railroad tracks and  
23 the Schuster Parkway, a four lane arterial with a median strip. The  
24

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1 only significant upland is a 22,000 square foot area on the western  
2 portion of the site which is used for parking. The shore itself is  
3 composed of rip-rap, rubble and debris, a legacy of past industrial  
4 use.

#### 5 IV

6 Inland from the railroad tracks and parkway, the topography rises  
7 sharply forming a bluff 80 to 145 feet high. At the top of the bluff  
8 is a large established residential neighborhood. On the northern edge  
9 of the neighborhood are a number of homes which command views of the  
10 waterfront, the bay, the Puget Sound and background land forms. The  
11 slope of the bluff is heavily vegetated, primarily in deciduous  
12 trees. The residential area begins some 300 to 400 feet horizontally  
13 from the project site.

#### 14 V

15 The proposed development involves the demolition of a dilapidated  
16 180,000 square foot three-story over-water warehouse, which now sits  
17 on a large piling-supported dock. The dock will remain and be  
18 improved and an access way will be maintained across it. The pier  
19 teehead east of the warehouse dock will be replaced and modernized,  
20 and a causeway will be built to it from the dock. Dolphins will be  
21 installed in order to accommodate the berthing of ships alongside the  
22 pier teehead.

1 A one-story 6,072 square foot office building with 12 covered  
2 parking spaces will be constructed at the western end of the dock, in  
3 a small part of the area now covered by the warehouse. The project  
4 also includes fencing, utilities and underlying structure work to the  
5 existing dock.

## 6 VI

7 Concern with the project does not focus on the structures to be  
8 built, but rather on the uses to which they are planned to be put.  
9 The object of the project is the creation of a new berthing area.

10 Presently up to two large ships are berthed side-by-side next to  
11 the warehouse dock, under a shoreline permit issued earlier and not  
12 contested. The instant request is for berthing space for two more  
13 large ships nested adjacent to the pier teehead east of the warehouse  
14 dock.

15 In addition the applicant would apparently like to use the new  
16 office building for general non-water dependent purposes.

## 17 VII

18 The kind of berthing envisioned for the site is termed "lay  
19 berthing". This involves berthing vessels in a reduced operating  
20 status with no movement for extended periods of time.

21 Sperry Ocean Dock hopes to use the new berthing area for United  
22 States Navy ships assigned to the Ready Reserve fleet. These ships  
23 would be maintained on "cold iron," ready to start engines on four  
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1 hours notice, but requiring five days notice to get underway fully  
2 equipped for duty.' While in lay berthing, the ships would be on shore  
3 power and not loaded with cargo.

4 Every 60 to 90 days a maintenance crew would check out the  
5 readiness of the operational equipment on each vessel. Shipboard  
6 cranes, normally in the down position would be raised for testing  
7 purposes periodically. No major repairs would be performed at the  
8 berthing site.

9 At least annually lay berthed ships would be moved from the site  
10 to a shipyard for maintenance. Tugboats would be utilized to  
11 accomplish such movement.

#### 12 VIII

13 The ships now at the warehouse dock are Ready Reserve ships, but  
14 there is no guarantee that Sperry Ocean Dock will be able to conclude  
15 a contract for the lay berthing of Ready Reserve ships at the new  
16 berthing site. If the space is used instead for private berthing, an  
17 attempt will be made to secure similar lay berthing arrangements, with  
18 large ships remaining in place for extended periods. It is  
19 anticipated, however, that private berthing would involve more ship  
20 movement, stays of 30 days or so being typical.

#### 21 IX

22 The larger of the two ships now berthed next to the warehouse  
23 dock is 700 feet long and 125 high. For purposes of analyzing the  
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1 instant proposal, this vessel size was selected by the applicant as  
2 representative of the types of ships that could be berthed at the  
3 adjacent proposed new berthing area.

4 The new berthing area is, however, designed to accommodate  
5 vessels up to 900 feet in length. Some Ready Reserve ships approach  
6 this size. Ships smaller than around 400 feet in length would not  
7 require the rare deep-water characteristic of the site for berthing.

8 X

9 Outboard of the overwater structures, the site provides depths  
10 for berthing between 47 feet and 175 feet at mean lower low water.  
11 The 175 foot depth is the depth of the bay at the relocated outer  
12 harbor line. On March 3, 1987, this line was moved seaward by action  
13 of the Harbor Line Commission at the request of Sperry Ocean Dock.  
14 The change provided 240 feet between the inner and outer harbor lines,  
15 enough space within the designated harbor area for the nested deep  
16 draft vessel berthing contemplated. The relocated outer harbor line  
17 now blends with the outer harbor line paralleling the grain elevator  
18 property to the southeast.

19 On March 22, 1988, the state Department of Natural Resources  
20 executed a lease with Sperry Ocean Dock covering the moorage of large  
21 ships over state-owned aquatic lands.

22 XI

23 The proposed berthing area is exposed to a long fetch and high  
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1 waves when winds blow from the north and is unsafe for smaller ships  
2 during winter storms. There is no breakwater at or near the site and  
3 the construction of such protection is not considered practical in  
4 this location.

## 5 XII

6 There are no ships in the Ready Reserve fleet under 100 feet high  
7 as measured from the water line to the top of the mast, rigging or  
8 other appurtenances. Such ships are typically around 125 feet high,  
9 and none exceed 150 feet. Such a height range would also encompass  
10 most private vessels of the length contemplated for the new berthing  
11 area.

## 12 XIII

13 Facilities on what is now the Sperry Ocean Dock site were  
14 originally constructed in 1890. The complex included flour mills and  
15 grain elevators, as well as the large over-water warehouse which  
16 remains today. Grain was brought to the facility in trains, processed  
17 and loaded on ships alongside the present warehouse dock. To the east  
18 of the warehouse dock were several teehead piers apparently also used  
19 for the transloading of grain products to ships.

20 In 1968 such operations at the Sperry site ceased with the sale  
21 of the property. Thereafter, the warehouse and dock were used for  
22 general cargo, including the storage of smelted copper. Ships as  
23 large as those presently berthed at the dock were berthed there at  
24

1 times during this period.

2 In 1979, the Sperry site was sold to a developer who sought to  
3 convert it to a marina. This effort was abandoned in 1981 and the  
4 property was put up for sale. Over the next five years a number of  
5 prospective buyers, considering a variety of uses, looked at but  
6 declined to buy the property.

7 XIV

8 On September 25, 1985, a substantial development permit (No.  
9 141.366) was approved for TLM Berthing, Inc., authorizing the  
10 long-term berthing of two ships alongside the old warehouse dock. No  
11 conditions were imposed on the height, length or size of these ships  
12 and no view corridor requirement was imposed.

13 In 1986 Sperry Ocean Dock acquired the site and continued to  
14 pursue the lay berthing project. The first of the ships now berthed  
15 at the warehouse dock was brought in in early September 1986.  
16 As noted, the instant application seeks an addition to the berthing  
17 facilities already in place.

18 XV

19 On January 10, 1989, the City of Tacoma issued substantial  
20 development permit No. 141.399A to Sperry Ocean Dock authorizing the  
21 additional berthing and attendant construction, subject to conditions  
22 set forth by the City's Hearing Examiner.

23 The Hearing Examiner's decision issued on November 2, 1988, and  
24 supplemented on December 21, 1988, sets forth the following  
25

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1 conditions, which remain at issue before this Board:

- 2 - A minimum of 30 percent of the berthing area  
3 authorized under Shoreline Permit No. 141.399A shall  
4 be preserved as a view corridor and the moorage of  
5 ships, barges and any other water craft shall be  
6 prohibited within the area. The size and location of  
7 the view corridor as well as the method proposed to  
8 ensure its continual maintenance shall be reviewed  
9 and approved by the City's Land Use Administrator  
10 prior to the issuance of any building permits for the  
11 site.
- 12 - Ships, barges and all other water craft moored at the  
13 berthing facility approved under Shoreline Permit  
14 No. -141.399A shall not exceed an overall height of  
15 100 feet as measured from Mean Higher High Water to  
16 the highest point of the mast, rigging and all other  
17 appurtenances on the vessel.
- 18 - Office Space. Office space to support water dependent  
19 uses is proper. . . . The use should be, and is,  
20 limited to such purposes. . . .

21 The appellant's Request for Review was filed with this Board on  
22 February 7, 1989.

23 XVI

24 Sperry Ocean Dock objects to the above quoted conditions as  
25 violative of the policies of the Shoreline Management Act and the  
26 provisions of the Tacoma Shoreline Master Program.

27 XVII

The Shoreline Management Act and the policies it sets forth  
became effective on June 1, 1971. The Tacoma Shoreline Master Program  
assigns the Sperry Ocean Dock site to the "S-7 Shoreline District.  
This district was established by the City in 1979.

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1       The intent of the "S-7 Shoreline District", which takes in the  
2 shoreline segment along Schuster Parkway, is set forth in Tacoma's  
3 Shoreline Ordinance at Section 13.10.100(A):

4       INTENT. The intent of the "S-7" Shoreline District is  
5 to allow development of industrial deep water  
6 facilities but to preserve the character and quality of  
life in adjoining residential areas, school and park  
properties.

7  
8                                   XVIII

9       The adjoining residential area which could be affected by a  
10 development at the Sperry Ocean Dock site is the Stadium - Seminary  
11 neighborhood beginning at or near the top of the bluff which rises  
12 south of Schuster Parkway.

13       Homes along Stadium Way which runs along the crest of the bluff  
14 form the first tier of residences in the vicinity of the subject  
15 berthing site. Just below these homes runs the Bayside Trail, which  
16 proceeds in an east-west direction along the bluff's upper side. From  
17 Stadium Way south is an older thoroughly filled-in residential  
18 neighborhood, consisting primarily of single-family detached homes.

19       The character and quality of life in the neighborhood for some  
20 distance inland could be adversely affected by an active heavy  
21 industrial use of the Sperry site which produced significant air  
22 emissions or noise. The relatively passive berthing use at issue will  
23 involve negligible impacts of this sort on any of the area's residences.

24       The material impact of the proposed shoreline use is on  
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1 residential views, an impact limited to the tier of homes along  
2 Stadium Way. Of 185 neighborhood homes sampled, 21 clearly view the  
3 berthing site, 27 have a partial view of the site and 137 have either  
4 scant or no view of the site. Of the 21 homes with clear site views,  
5 seven would be more than minimally impacted by the berthing.

#### 6 XIX

7 The proposed berthing will involve no substantial interference  
8 with views of the water from schools or parks. However, the City's  
9 interest in the land along the bluff includes the Bayside Trail. The  
10 visual experience of trail users involves a changing visual scene as  
11 they progress along the path. In places vegetation along the path  
12 obscures views towards the water. In places views toward the water  
13 are unimpaired and will remain so with ships at the new berthing  
14 site. We do not believe that the introduction of additional moored  
15 ships, as proposed, will diminish the experience of trail users.

#### 16 XX

17 As to views from residences, the homes of respondents Woodworth  
18 and Steel would be the most severely affected by the presence of ships  
19 at the new berthing site.

20 The Woodworth home at 725 Stadium Way was built in 1979. The  
21 Woodworths purchased it and moved in in September of 1985. A year  
22 later the first large ship arrived for lay berthing at the warehouse  
23 dock. A second large ship was lay berthed next to the first in  
24 November of 1985.

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1       The Steel residence is located at 719 Stadium way, to the east of  
2 Woodworths'. It was completed in July of 1988. When the construction  
3 was undertaken, Steel mistakenly believed that Sperry Ocean Dock had  
4 abandoned its plans to utilize a second lay berthing site to the east  
5 of its first one.

6       The Woodworth and Steel homes are not immediately adjacent to the  
7 street. Rather they are located at the end of long downsloping  
8 driveways at a lower elevation than older houses along Stadium Way  
9 proper. This difference in elevation increases the view impact at the  
10 two newer homes.

11       The Woodworths' view is principally affected by the ships already  
12 in place at the berthing site along the warehouse dock. The effect of  
13 introducing similar new ships to the east would be less dramatic, but  
14 would add to the cumulative effect. To some degree intervening  
15 vegetation will reduce this additive impact.

16       Steel's view, on the other hand, is little affected by the  
17 present lay berthing. Similar ships at the new berthing site,  
18 however, would occupy the middle of Steel's visual field and  
19 significantly alter his view.

20       Nevertheless, even after such ships are brought into the new  
21 site, the views of both the Woodworths and Steel would still include  
22 much of the water of the Sound and the landscape beyond.

XXI

Moreover, the ability of the Woodworths and Steel to experience a marine view from their homes is subject to an unpredictable variable. The City of Tacoma issues permits which allow the trimming of trees and shrubbery in front of homes in the area in order to open up views. These permits are discretionary or no right to their issuance has or could accrue. If trimming did not occur seasonally, it is likely that view blockage greater than that caused by the moored ships would result from the natural growth of vegetation in front of the Woodworth and Steel homes.

XXII

The view analysis presented in evidence hypothesized the continued presence of a 700 foot ship at the warehouse dock and the simulated insertion of a ship of the same length at the new berthing area. The analysis assumed a distance between ships at the two berthing sites of about 575 feet.

However, the berthing design, in fact, would allow ships to be brought closer together. Except as to the Woodworths, we are persuaded that the horizontal blockage presented by the elimination of intervening space between ships would not involve significant impairment of residential views.

XXIII

The entire Sperry Ocean dock site, including both the existing and the proposed berthing area, extends approximately 2,000 lineal

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1 feet along the waterfront. The overall permission for berthing given  
2 in the two substantial development permits for the site encompasses  
3 this full frontage length.

4 The precise length allocated to the new berthing area in the  
5 instant permit is not clear. On the basis of the whole record,  
6 however, it seems likely that the available lineal frontage was  
7 intended to be divided equally between the two berthing areas and we  
8 construe the instant permit to authorize berthing in the easterly  
9 1,000 feet of the site.

10 A 30% view corridor for "the berthing area authorized under  
11 Shoreline Permit No. 141.399A," therefore translates to 300 feet.  
12 Sperry Ocean Dock, has offered to guarantee a 10% view corridor, or  
13 100 feet.

#### 14 XXIV

15 We find no palpable difference in impact on the character and  
16 quality of life in the adjoining neighborhood as a whole between  
17 mooring ships 300 feet apart and mooring them 100 feet apart.<sup>1/</sup>  
18

19 1/ For whatever marginal benefit open space between ships may have,  
20 we note that even the 100 foot figure assumes that the old berthing  
21 area to the west is occupied for its entire 1000 foot length. In  
22 actuality this is not likely to be the case, so that the intervening  
23 space between ships will probably always exceed 100 feet. If two 700  
24 foot ships are involved, as in the view analysis presented, the  
distance will approach 600 feet or 30% of the entire site. The  
smaller of the two ships now at the warehouse deck is only 540 feet  
long, suggesting that an even larger gap between the berthing sites is  
a possibility.

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1  
2 XXV

3 The old Sperry warehouse now occupies the lower portion of the  
4 view from the bluff across roughly the length of the existing berthing  
5 area. This blockage extends vertically to a series of roof peaks, the  
6 highest approaching 100 feet, the more typical being between 50 and 60  
7 feet.

8 Demolition of this deteriorated structure will have little effect  
9 on water views when ships are moored along the dock. The sight  
10 barrier of the warehouse will be replaced by the barrier of the moored  
11 ships. But at times when moored ships are not on site, the view will  
12 have been opened up considerably.

13 XXVI

14 The view analysis presented simulated a 125 foot high ship at the  
15 new berthing area. This height was measured to the top of masts,  
16 rigging, or other appurtenances, features through which much of the  
17 visual background can be seen. Complete visual blockage is caused  
18 only by those lower-elevation ship features which have the same effect  
19 as walls of buildings--the hull above the water line, and, for a  
20 lesser area, the working/living spaces of the superstructure.

21 We do not think that the impact on residential views of ships up  
22 to 145 or 150 feet high to the top of their highest appurtenances  
23 would differ substantially from the impact analyzed with a 125 foot  
24 high ship at the new berth. Except as to the Woodworths and Steel, we  
25

1 believe that the vertical blockage presented by ships of such heights  
2 would not involve significant impairment of residential views.

3 XXVII

4 The 100 foot height limit imposed by the City of Tacoma is also a  
5 measurement to the top of the highest appurtenances. This limit would  
6 effectively restrict use of the new berthing site to ships with a view  
7 blocking hull and superstructure much lower than 100 feet. It would  
8 also effectively reduce the length of ships tied up there.

9 Compared with unrestricted berthing, compliance with the height  
10 limit at the new site would mean a lessening of impacts on views from  
11 the bluff. But, we find that this difference would not be so great as  
12 to perceptibly influence the character and quality of life of the  
13 adjoining neighborhood as a whole.

14 On the other hand, we are convinced that the imposition of the  
15 100 foot height restriction would eliminate the new berthing area for  
16 ships requiring deep water moorage.

17 XXVIII

18 In sum, most of the adjoining residential area would be  
19 unaffected by the addition of ships at the berthing site up to the  
20 largest size which occurs in the Ready Reserve fleet. The views of  
21 Woodworths and Steel would be significantly altered by the presence of  
22 such large ships, but as to other residences with clear views of the  
23 site, the view impact would be no more than moderate.

1       The conditions imposed by the city, would limit berthing to  
2 vessels smaller than those in the Ready Reserve fleet, sacrificing use  
3 of the rare natural advantage of the site -- near shore deep water --  
4 to the visual wants of a few individuals.

5                               XXIX

6       We note that the view impairment question is, in essence, a  
7 matter of aesthetics and, therefore, necessarily involves a degree of  
8 subjectivity. Not everyone would agree, for example on whether  
9 tearing down the old Sperry warehouse represents an aesthetic gain or  
10 an aesthetic loss. Likewise, not everyone would find a view of large  
11 ships at a nearby berth objectionable.

12       Our findings, however, are not based on judgments about the  
13 aesthetics of large ships per se, but rather on an assessment of how  
14 disruptive they will be to the character and quality of life in the  
15 adjoining neighborhood as compared to smaller versions of the same  
16 thing. In this regard, we are mindful that at the time the "S-7  
17 Shoreline District" was created, the history of shoreline use at the  
18 Sperry Ocean Dock site involved the mooring of ships of a size  
19 comparable to those now sought by appellants.

20                               XXX

21       Any Conclusion of Law which is deemed a Finding of Fact is hereby  
22 adopted as such.

23       From these Findings of Fact, the Board comes to the following  
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1 CONCLUSIONS OF LAW

2 I

3 We review the permit conditions appealed for consistency with the  
4 Shoreline Management Act and the applicable shoreline master program.  
5 RCW 90.58.140(2)(b).  
6

7 II

8 The Tacoma Shoreline Master Program (TSMP) sets forth policies  
9 for shoreline development in designated shoreline environments. The  
10 "S-7 Shoreline District," which encompasses the Sperry Ocean Dock  
11 site, is part of the "urban" environment, intended for high intensity  
12 uses in already developed areas, with particular emphasis on  
13 "water-dependent industrial and commercial uses requiring frontage on  
14 navigable waters." TSMP, p. 8.

15 The instant proposal for lay berthing fits within this  
16 description, and qualifies as a use permitted outright under the  
17 Tacoma Shoreline Ordinance (TSO) which implements the master program.  
18 TSO, Section 13.10.100(D)(4)(10).

19 III

20 In dealing with a permitted use, the inquiry proceeds to a search  
21 for specified bulk, dimensional or performance standards which must be  
22 applied to condition the use. In the "S-7 Shoreline District" there  
23 are no such specific standards for the berthing activity in question.  
24 The height and setback requirements set forth in TSO Section  
25 13.10.100(G) and (H) apply only to structures.

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1 In our Order Denying Motions for Partial Summary Judgment,  
2 incorporated herein as Attachment A, we decided that the ships to be  
3 tied up at the new berthing area are "vessels" as that term is defined  
4 in TSO Section 13.10.030 00(2). "Vessels" are excluded from the  
5 definition of "structure," TSO, Section 13.10.030 JJ(1).

6 We adhere to that decision. The ships sought for lay berthing  
7 will be afloat, with operational systems at the ready, able to get  
8 underway on relatively short notice. They will not be either  
9 drydocked or mothballed. They will continue to be in navigation, a  
10 normal public use of the water.

#### 11 IV

12 Absent specific standards for conditioning a permitted use,  
13 conditions imposed must be evaluated for consistency with the overall  
14 intent of the applicable shoreline segment or district.

15 In regard to the "S-7" segment, the TSMP contains the following  
16 relevant language:

- 17 - Natural deep water lying immediately off shore is a  
18 significant characteristic of the area, making it  
extremely desirable for port development...
- 19 - Recognizing the City of Tacoma ownership adjacent  
20 to the north and the residential nature of the  
21 adjoining upland neighborhood, and in the interest  
of gradual transition between dissimilar land uses,  
22 special consideration is given to the  
interrelationship of these particular areas.

TSMP, p. 84.1

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(21)

The implementing ordinance puts these concerns in more succinct form in the "Intent" paragraph at section 13.10.100(A), (quoted above in Finding of Fact XVII). There are two objectives:

- (1) to allow development of industrial deep water facilities, and
- (2) to preserve the character and quality of life in adjoining residential areas, school and park properties.

## V

The City has imposed a height limitation of 100 feet and a view corridor of 30%. We must decide whether these conditions are consistent with the twin objectives legislated as the intent for the "S-7 Shoreline District." We conclude that they are not.

## VI

The height limitation would prevent achieving the objective of development of industrial deep water facilities. It would do this by effectively limiting the site to ships which do not require deep water.

Moreover, because of lack of protection from northerly winds, many of the smaller vessels which meet the height limitation could not be safely berthed at the site year around.

Furthermore, the height limitation fails to advance the objective of preserving the character and quality of life in adjoining residential areas, schools and ports. That character and quality would not be materially affected by taller ships at the new berthing site. The condition, thus, serves no preservation purpose.

1           The 100 foot height limitation is inconsistent with both of the  
2 objectives of the "S-7 Shoreline District."

3                               VII

4           The view corridor requirement would not wholly frustrate the  
5 objective of developing the berthing site for use by deep draft  
6 ships. By effectively limiting ship lengths, it would restrict but  
7 not eliminate the market for lay berthing available to Sperry Ocean  
8 Dock.

9           The 30% view corridor is, however, inconsistent with the second  
10 objective of the "S-7 Shoreline District." The character and quality  
11 of life in adjoining residential areas, schools and parks would not be  
12 materially affected by eliminating the open space between hulls of  
13 ships at the two berthing sites. Therefore, the condition does  
14 nothing to preserve that character and quality.

15                           VIII

16           The master program's concern for harmonizing the dissimilarity of  
17 uses between the "S-7 Shoreline District" and the adjacent residential  
18 uplands is accommodated by the proposal at hand through the passive  
19 nature of the lay berthing use. This quiet and clean operation will  
20 have no intrusive effect on life in the nearby neighborhood. It's  
21 only effect will be on looking out from the neighborhood onto what is,  
22 and has historically been, an industrial zone. For the neighborhood  
23 as a whole, even this effect will be minor.

The choice, then comes down to whether the pre-planned permitted use of the deep water facility should be, in effect, prevented in aid of the aesthetic interests of the Woodworths and Steel. We conclude that the TSMP neither compels nor supports such a result.

## IX

The general policies of the Shoreline Management Act (SMA), the underlying statute, likewise militate against the height and view corridor restrictions Tacoma has imposed. The very genesis of the SMA was concern for the preservation of navigational values expressed through the public trust doctrine. See Wilbur v. Gallagher, 77 Wn.2d 306, 462 P.2d 232 (1969); Orion Corporation v. State, 109 Wn.2d 621, 747 P.2d 1062 (1987).

The policy expressed in RCW 90.58.020 calls for development of shorelines in a manner that allows for only limited reduction of rights of the public in navigable waters. There is in the Act a built-in pro-navigational bias, serving as the backdrop for all planning and use conflict decisions.

In RCW 90.58.020 the "aesthetic qualities of the natural shorelines" are also singled out for particular attention. But, in the instant case any perceived conflict between aesthetics and navigation is not difficult to resolve. Here, we do not deal with a pristine shore where the aesthetics of the natural scene might be found to predominate. Here we deal with a waterfront in the middle of



1 one of the state's largest cities which has been in industrial use for  
2 a century and which; under the approved shoreline plan, is slated for  
3 continued industrial use.

4 Under these circumstances, we conclude that the restrictions  
5 placed on navigation at this particular, unusual, urban, deep-water  
6 site are contrary to the general policies of the SMA. See Portage  
7 Bay - Roanoke Park Community Council v. Shorelines Hearings Board, 92  
8 Wn.2d 1, 593 P.2d 151 (1979).

9 X

10 The water area where the proposed deep-draft berthing would take  
11 place is, of course, all seaward of the line of extreme low tide.  
12 Therefore, the ships would be berthed in "shorelines of state-wide  
13 significance" as defined in RCW 90.58.030(2)(e)(iii).

14 The SMA establishes a hierarchy of preferences for shorelines of  
15 state-wide significance in RCW 90.58.020. The highest preference is  
16 given to uses which "recognize and protect the state-wide interest  
17 over local interest." The proposed port development use proposed by  
18 Sperry Ocean Lock promotes interests in commerce, transportation and,  
19 possibly, national defense which transcend the purely local. The only  
20 view impairment of significance is decidedly limited and local. We  
21 conclude that the proposed conditions fail to protect the state-wide  
22 interest over the local interest.

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XI

Because the Woodworths and Steel were granted intervention on condition that they not be allowed to raise new issues, their efforts to inject a substantive SEPA (State Environmental Policy Act) issue into this case were rejected.

However, even were such an issue before us, the Tacoma Hearing Examiner's decision we are reviewing was not based on substantive SEPA, and we have been pointed to no basis in Tacoma's SEPA regulations for the conditions imposed. RCW 43.21C.060: See Cougar Mountain Associates v. King County, 111 Wn.2d 742, 765 P.2d 264 (1988).

XII

The Woodworths and Steel acquired no private property interest in views when they bought their properties. See Collison v. John L. Scott, Inc. 55 Wn.App 481, \_\_\_\_ P.2d \_\_\_\_ (1989). Any entitlement they might have to views would be an entitlement provided to the public through generally applicable legislation such as the SMA.

We have concluded on the record before us, that the SMA and relevant master program do not support the view-related conditions imposed by the City of Tacoma.

The proposal berthing of Ready Reserve ships or private ships of comparable size at the new berthing site would not so interfere with the character and quality of life in the adjoining residential area as to justify the conditions imposed. Therefore, the height condition

1 must be stricken from the permit. The 10% view corridor offered by  
2 Sperry Ocean Dock should be substituted for the 30% view corridor  
3 requirement.

4 XIII

5 Finally, we have not been persuaded that there is any basis for  
6 allowing the new office building to be put to non-water dependent  
7 uses. Accordingly, the condition on Office Space imposed by the  
8 Hearings Examiner must be sustained.

9 XIV

10 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
11 adopted as such.  
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ORDER

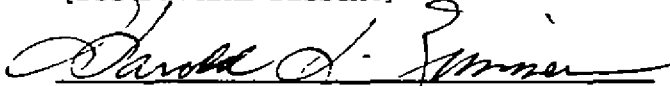
The substantial development permit issued by the City of Tacoma in response to Application No. 141.399 is REVERSED and the matter is REMANDED to the City for the issuance of a permit consistent with this decision.

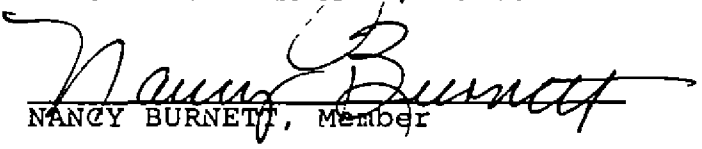
DONE this 1st day of March, 1990.

SHORELINES HEARINGS BOARD

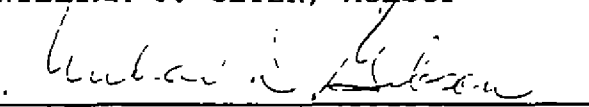
WICK DUFFORD, Presiding  
[See Partial Dissent]

JUDITH A. BENDOR, Chair  
[See Partial Dissent]

  
HAROLD S. ZIMMERMAN, Member

  
NANCY BURNETT, Member

  
WILLIAM T. GEYER, Member

  
MICHAEL D. GIBSON, Member

VIEWS OF WICK DUFFORD AND JUDITH A. BENDOR  
CONCURRING IN PART AND DISSENTING IN PART

1 VIEWS OF WICK DUFFORD and JUDITH A. BENDOR  
2 CONCURRING IN PART AND DISSENTING IN PART

3 We agree with the majority that the 100 foot height limitation  
4 imposed by Tacoma should be stricken. The effect of taller ships on  
5 the vertical component of views from the bluff, while not  
6 insignificant, is not so great as to merit a condition which would  
7 prevent use of the berthing site by deep draft ships.

8 We disagree, however, with the findings and conclusions relating  
9 to the 30% view corridor. We believe that our colleagues have  
10 understated the visual effect of the wall of steel which would be  
11 permissible across virtually that entire two-berth site if the view  
12 corridor were eliminated. We would find that the impact of such an  
13 immense expanse of monochrome metal is substantial.

14 Moreover, we do not think that the 30% view corridor would  
15 seriously impinge on the business of Sperry Ocean Dock. As we  
16 interpret the City's permission, the view corridor requirement would  
17 merely limit the new berthing area to ships no longer than 700 feet.  
18 The old berthing area at the warehouse dock would remain unrestricted  
19 as to view corridor along its 1,000 foot length.

20 The largest ship lay berthed at the warehouse dock is now 700  
21 feet long. Sperry Ocean Dock would still be able to go after longer  
22 ships at that site.

1       The use of the waterfront below the bluff has changed over the  
2 years. Once the whole north shore along Ruston Way and the present  
3 Shuster Parkway was covered with mills and plants engaged in heavy  
4 industry. Now the area to the northwest is devoted primarily to  
5 restaurants and parks. The S-7 Shoreline District is now at the edge  
6 of a non-industrial area and the general nature of shoreline uses in  
7 the near vicinity is far different from what it was historically.

8       With this alteration in the shoreline use, some alteration in the  
9 character and quality of life in the adjoining residential  
10 neighborhood has occurred as well.

11       Nothing of the size of the ships presently berthed at the old  
12 dock had been at the Sperry site for some years when the first Ready  
13 Reserve ships were moved in in 1986. Absent such large ships, the  
14 views from the bluff in the Stadium-Seminary neighborhood are  
15 spectacular. When the first Ready Reserve ships arrived, the reaction  
16 was understandably widespread shock and dismay in the adjoining  
17 residential neighborhood. Many residents thought the character and  
18 quality of life had been changed dramatically.


19       The instant proposal calls for repeating this same dramatic  
20 effect at a new berthing site immediately adjacent to the old. In  
21 these circumstances, we think the 30% view corridor is an appropriate  
22 measure toward striking a balance between preservation of values which  
23 define the neighborhood and allowing use of the deep water site by  
24 ships that need it.

1 Tacoma clearly has the power to condition shoreline substantial  
2 development permits generally. San Juan County v. Department of  
3 Natural Resources, 28 Wn. App. 796, 626 P.2d 995 (1981). We strongly  
4 believe that it is within Tacoma's power under the SMA to impose  
5 limiting conditions on the mooring of ships along its urban  
6 shorelines. In the future, someone might want to moor massive super  
7 tankers, or a Texas oil tower at the Sperry Ocean Dock site. We would  
8 be alarmed to think that Tacoma could not in the pursuit of rational  
9 planning for the City's shorelines, regulate such uses.

10 In Shorelines appeals, the appellant has the burden of proof.  
11 RCW 90.58.140(7). In the present case that means the burden of  
12 proving that the conditions imposed do not render the development  
13 consistent with the Act or the implementing master program. As to the  
14 view corridor condition, we are unconvinced that Sperry Ocean Dock has  
15 carried its burden.

16 The 30% view corridor requirement can be met by the appellant.  
17 It does not preclude development utilizing the deep water at the  
18 site. It does not make the project inconsistent with the SMA or  
19 TSMP. We would sustain the view corridor condition.

20  
21   
22 WICK DUFFORD, Presiding

23   
24 JUDITH A. BENDOR, Chair



**ATTACHMENT A**

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

SPERRY OCEAN DOCK LIMITED, and )  
DEPARTMENT OF NATURAL RESOURCES, )

Appellants, )

v. )

CITY OF TACOMA; ATTORNEY GENERAL )  
and DEPARTMENT OF ECOLOGY; JOHN )  
and JUDY WOODWORTH and BRUCE )  
STEEL, )

Respondents. )

SHB Nos. 89-4 & 89-7

ORDER DENYING MOTIONS FOR  
PARTIAL SUMMARY JUDGMENT

This matter came before the Shoreline Hearings Board on April 20, 1989, in Lacey, Washington, on appellants' Motions for Summary Judgment. Sperry Ocean Dock Limited seeks to overturn height limitation and view corridor restrictions imposed on the berthing of ships by the City of Tacoma in a substantial development permit. The height and view regulations are asserted to be lawful under the Tacoma Shoreline Management Master Program, and to violate Article 15,

Attachment A

Sections 1 and 6 of the Washington State Constitution, and to violate the policies of the Shoreline Management Act (SMA) for "Shorelines of Statewide Significance."

The Department of Natural Resources seeks to overturn the height restriction imposed on the berthing of ships primarily on constitutional grounds.

#### PROCEDURAL BACKGROUND

1. A Request for Review for SHB No. 89-4 was filed with the Shorelines Hearings Board on February 7, 1989, by Sperry Ocean Dock, Ltd.

2. A Request for Review of SHB No. 89-7 was filed with the Shorelines Hearings Board on February 16, 1989, by the Washington State Department of Natural Resources. On February 17, 1989, an Order was issued consolidating these requests.

3. On February 17, 1989, the Attorney General and the Department of Ecology filed a Motion to Intervene as respondents.

4. A pre-hearing conference was held on March 14, 1989, at the Board's office in Lacey, Washington. At the pre-hearing conference, the Attorney General and Department of Ecology were granted the right to intervene as respondents. The Motion to Intervene of John and Judy Woodworth and Bruce Steel, filed March 13, 1989, was set for argument at a second pre-hearing conference. A Pre-Hearing Order was issued March 15, 1989.

1           6. At the second pre-hearing conference on March 21, 1989 the  
2 Woodworths and Steel were allowed to intervene. The terms of this  
3 intervention were memorialized in a Second Pre-Hearing Order, dated  
4 March 22, 1989, as follows:

5           [Intervenors] shall take the case as they find it, the  
6 issues having been enunciated by the parties appellant.

7           At neither pre-hearing conference did respondents or intervenors  
8 seek to raise additional issues.

9           7. On March 21, 1989, Sperry Ocean Dock filed its Motion for  
10 Summary Judgment. On March 27, 1989, a Motion for Summary Judgment was  
11 filed by the Department of Natural Resources. Thereafter, the City of  
12 Tacoma and the Woodworths and Steel filed memoranda in opposition, and  
13 Sperry Ocean Dock filed a reply.

14           8. On April 20, 1989, the Motions for Summary Judgment came on  
15 for hearing before the Board members: Hal Zimmerman, Presiding; Wick  
16 Dufford, Chairman; Nancy Burnett, Mike Gibson, and Bill Geyer. Judith  
17 A. Bendor has reviewed the record.

18           Appellant Sperry Ocean Dock, Ltd. was represented by Patricia K.  
19 Schaefer of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, of  
20 Tacoma, Washington, and Darrel L. Peeples of Swanson, Parr, Cordes,  
21 Younglove, Peeples, and Wyckoff, of Olympia, Washington.

22           Appellant Department of Natural Resources was represented by Kay  
23 Brown, Assistant Attorney General. Respondent City of Tacoma was  
24

1 represented by Kyle J. Crews, Assistant City Attorney, and Intervenor  
2 Washington State Department of Ecology was represented by Allen T.  
3 Miller, Jr., Assistant Attorney General. Intervenor John and Judy  
4 Woodworth and Bruce Steel were represented by Alexander W. Mackie of  
5 Owen, Weaver, Davies, Mackie, Lyman and Phillips of Olympia, Washington.

6 10. Prior to hearing the Motions for Summary Judgment, Sperry  
7 Ocean Dock moved to strike the argument of Woodworths and Steel that  
8 the height and view regulations at issue are supported by the  
9 substantive provisions of the State Environmental Policy Act (SEPA).  
10 The Board granted the appellant's motion, disallowing expansion of  
11 issues beyond those previously raised, thus foreclosing SEPA issues.

12 The Board rejected Sperry's motion to strike exhibits attached to  
13 the affidavit of Alexander W. Mackie, counsel for Woodworths and Steel.

14 MATERIALS CONSIDERED

15 The following were considered by the Board upon the Motions for  
16 Summary Judgment:

17 1. Requests for Review filed by Sperry Ocean Dock (February 7,  
18 1989) and Department of Natural Resources (February 16, 1989), with  
19 attachments including: Shoreline Substantial Development Permit No.  
20 141.399A granted by the City of Tacoma to Sperry Ocean Dock, Ltd.,  
21 incorporating conditions set by the Hearings Examiner in his order of  
22 November 2, 1988, and his supplemental report and recommendations of  
23 December 21, 1988.

2. Master program for Shoreline Development of the City of Tacoma.

3. The Hearings Examiner reports on the project.

4. Motions for Summary Judgment of Sperry Ocean Dock and Department of Natural Resources, together with supporting affidavits of Gary G. Coy, Patricia K. Schaefer, & David Bergey and attachments.

5. Briefs in Opposition to Motion for Summary Judgment filed by the City of Tacoma on April 10, 1989 and Memorandum in Opposition of Appellants' Motion for Summary Judgment, filed by Intervenor Woodworths and Steel on April 11, 1989, with affidavit of Alexander W. Mackie and attachments.

6. The prior decisions of the Board cited herein.

#### UNDISPUTED FACTS

On these motions, the following are undisputed:

1. Sperry Ocean Dock, Ltd. applied for a substantial development permit for the construction of a berthing facility at the site of the Old Sperry Mill along Schuster Parkway in the City of Tacoma.

2. The site is a rare, deep-water site in Commencement Bay.

3. The berthing facility will provide private berthing as well as berthing for the National Defense Reserve Fleet, which is maintained by the Maritime Administration to provide Ready Reserve Vessels in advanced state of readiness for immediate deployment in case of national emergency.

1           4. The berthing area is owned by the State of Washington,  
2 Department of Natural Resources.

3           5. The berthing area is a designated harbor area under RCW 79.92.

4           6. Sperry Ocean Dock, Ltd. has been granted a long-term lease  
5 for the berthing area by the Department of Natural Resources.

6           7. The site is located in an urban environment in an area  
7 designated "S-7" under the City of Tacoma Shorelines Management Master  
8 Program which specifically permits the industrial type uses being  
9 proposed.

10          8. City of Tacoma approved issuance of a substantial development  
11 permit for the berthing facility, but imposed conditions of approval,  
12 two of which are subject of the summary judgment motions. They are:

13           1. Ships, barges, and all other water craft  
14 moored at the berthing facility . . . shall not  
15 exceed an overall height of one hundred (100) feet  
16 as measured from Mean Higher High Water to the  
highest point of the mast, rigging and all other  
appurtenances on the vessel (Condition 3(c)); and

17           2. A minimum of thirty percent (30%) of the  
18 berthing area . . . shall be preserved as a view  
19 corridor and the moorage of ships, barges and  
other water craft shall be prohibited within the  
area. . . . (Condition 3(b)).

20          9. The height limitation precludes the use of this site for  
21 layberthing of vessels which fully utilize the natural deep water  
22 characteristics of the site.

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ISSUES PRESENTED

Sperry Ocean Dock asks for summary judgment striking the height limitation and view corridor restriction for the following reasons:

1. The imposition of a height limitation and view corridor restriction is an unlawful interpretation of the City of Tacoma Shorelines Management Master Plan.

2. The height limitation and view corridor restriction violates Article 15, Section 1 and 6 of the Washington State Constitution.

3. The imposition of a height limitation and view corridor restriction which gives preference to aesthetic considerations of local, private interests violates the policies of the Shoreline Management Act which policies give preference and priority to water dependent uses situated within Shorelines of State-wide Significance.

The Department of Natural Resources concurs in Sperry's arguments regarding the Tacoma Shoreline Management Master Program, and argues independently that the conditions at issue are unlawful because they frustrate a constitutionally sanctioned use of the harbor area.

DECISION

I

INTERPRETATION OF TACOMA SHORELINE MASTER PROGRAM

1. The Tacoma Master Program regulations for the "S-7 Shoreline District" are contained in Section 13.10.100. The height limitation and view corridor restrictions are as follows:

13.10.100(G) - HEIGHT LIMITATION FOR STRUCTURAL IMPROVEMENTS. Any building, structure, portion thereof



hereafter erected (excluding equipment for the movement of water borne cargo between storage and vessel, vessel and storage) shall not exceed a height of one hundred (100) feet, unless such building or structure is set back on all sides one foot for each four feet each foot such building or structure exceeds one hundred (100) feet in height. (Emphasis added.)

13.10.100(H) - AREA REGULATIONS. A building or structure hereafter built, enlarged, or moved, shall provide the following set backs:

1. Side yard/view corridor/same as required in the "S-1" Western Slope South Shoreline District.

S-1(1) Side yard/view corridor. A minimum side yard/view corridor of 30% of the width of the site shall be provided, except as set forth below. . . . (Emphasis added.)

2. These limitations expressly apply to any "structure" the term "structure" is defined by Subsection 13.10.030 JJ(1):

"Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner whether installed on, above, or below the surface of the ground or water, except for vessels. (Emphasis added.)

The definition of structure, thus, specifically excludes "vessels".

The term "vessel" is defined by subsection 13.10.030 00(2):

"Vessel" includes ships, boats, barges or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

3. The permit conditions at issue apply to the mooring of "ships, barges and other water craft." There is no dispute that the proposed use of the berthing facilities is for mooring of such craft, designed for navigation.

1 Navigation itself is a normal public use of the water. Thus, for  
2 any water craft to cease to be a "vessel," it must cease to be involved  
3 in navigation. Navigation, as generally understood, includes a certain  
4 amount of in-port time alongside berthing facilities. There may be a  
5 time when a ship has been tied up for so long that it ceases,  
6 reasonably, to be considered in navigation. For our purposes, however,  
7 this possibility is immaterial. The permit conditions imposed would  
8 apply to "ships, barges and water craft" whether they are moored for 10  
9 minutes or for 10 weeks.

10 On the record before us, we conclude that the City's approval is  
11 for the moorage of "vessels" as that term is defined in the relevant  
12 Master Program. Should the duration of moorage at any time be so  
13 extended as to take moored craft outside the definition of "vessel,"  
1 the activity would be beyond the approval given. We have before us no  
15 affidavits setting forth testimonial facts demonstrating that the use  
16 to be made of the berthing facility is other than navigational.

17 Because the craft to be moored are "vessels" they do not fall  
18 within the definition of "structures" used in the Master Program.  
19 Accordingly, the height and view corridor restrictions mandated for  
20 "structures" by subsections 13.10.100 (G) and (H) are not applicable to  
21 the water craft moored at the site.

22 4. This does not mean, however, that the 100 foot height limit  
23 and 30% view corridor restrictions are necessarily invalid conditions  
24

1 under the Master Program. The intent of the district designation  
2 involved is stated at Subsection 13.10.100(A):

3 The intent of the "S-7" Shoreline District is to allow  
4 development of industrial deep water facilities, but to  
5 preserve the character and quality of life in adjoining  
6 residential areas, school and park properties.  
(Emphasis added.)

7 Conditions on the development of permitted uses are an appropriate  
8 means to achieve the stated intent. See, San Juan County v. Department  
9 of Natural Resources, 28 Wn.App. 796, 626 P.2d 995 (1981). Therefore,  
10 it remains a question for determination at hearing whether the  
11 challenged height and view corridor permit conditions are appropriate  
12 for realizing the compatibility objectives which are the basis of the  
13 "S-7" district.

## 1 II

### 15 CONSTITUTIONAL ISSUES

16 The Board is not empowered to determine constitutional questions  
17 and, therefore, declines to opine on the constitutional grounds for  
18 summary judgment raised by Sperry Ocean Dock and the Department of  
19 Natural Resources. See, Yakima County Clean Air Authority v. Glascam  
20 Builders, 85 Wn.2d 255, 534 P.2d 33 (1975).

## 21 III

### 22 CONFORMITY OF PERMIT CONDITIONS WITH POLICIES OF SHORELINE 23 MANAGEMENT ACT

24 The SMA contains a broad policy statement in RCW 90.58.020. The  
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1 weighing of numerous factors is necessary in determining whether a  
2 particular development is in accordance with these policies. The  
3 determination involves the exercise of discretionary judgment. See  
4 generally, Peterson v. Department of Ecology, 92 Wn.2d 306, 596 P.2d  
5 285 (1979). Even the specific enumeration of preferences for  
6 shorelines of statewide significance leaves much for interpretation in  
7 concrete cases. On the record before us, we are unable to say, as a  
8 matter of law, that the aesthetic concerns bound up with the  
9 limitations on height and view corridor are purely matters of local  
0 interest or that the priority given to water dependent uses favors the  
1 mooring of ships over the preservation of shorelines aesthetics. See,  
2 Department of Ecology v. Pacesetter Construction Co., 89 Wn.2d 203, 571  
3 P.2d 196 (1977).

4 Therefore, we conclude that the permit conditions cannot be  
5 stricken as violative of the policies of the Shoreline Management Act.  
6 We lack an adequate factual basis for determining the consistency of  
7 the project as conditioned with the underlying statute.  
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ORDER

Based on the foregoing, it is Ordered that the appellants' Motions for Summary Judgment are DENIED. The hearing on the merits shall be on September 20-21, 1989, as previously scheduled.

DONE at Lacey, Washington, this 1<sup>st</sup> day of June, 1989.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Presiding

Wick Dufford  
WICK DUFFORD, Chairman

Judith A. Bendor  
JUDITH A. BENDOR, Member

Nancy Burnett  
NANCY BURNETT, Member

Mike Gibson by WD  
MIKE GIBSON, Member

William Geyer by WD  
WILLIAM GEYER, Member